IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 147 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

CAMA MOTORS PVT.LTD.

Appearance:

MR MANISH R BHATT for Petitioner

MR Manish Shah for Mr. JP SHAH for the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 07/04/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal, Ahmedabad has referred the following two questions to this High Court for its opinion under section 256(1) of

the Income-tax Act, 1961.

"1. Whether the Appellate Tribunal is right in law and on facts in holding that section 43B cannot be applied to the amount of Rs. 9,68,948/- being unpaid sales tax ?

2. Whether the Appellate Tribunal is right in law and on facts in holding that personal accident insurance premium cannot be treated as a perquisite ?"

2. As regards the question no. 1, the assessee had, in his note to the statement of income showed sales tax payable of Rs. 9,68,948/- in the assessment year 1984-85. The ITO held that since the amount was paid in the subsequent financial year of 1984-85, the amount could not be allowed in view of the provisions of section 43B of the Act. The Commissioner of Income-tax (Appeals) confirmed this view. The Tribunal, however, holding that the assessee had paid before the due date, accepted the claim of the assessee. The point is now concluded by the decision of the Supreme Court in Allied Motors (P) Ltd. vs. CIT, reported in 224 ITR, 677 in which the Supreme Court held that the first proviso to section 43B was retrospective in operation. Therefore, when the sum is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred, then it would be treated actually paid. The decision of the Gujarat High Court in CIT vs. Chandulal Venchand reported in 209 ITR,7 was approved by the Supreme Court in Allied Motors's case. In CIT vs. Chandulal Venichand, this Court while construing the provisions of section 43B had taken the view that the proviso to section 43B related back to the date when section 43B came into operation i.e. April 1,1984. The Court on that basis held that such liability would be allowable as a deduction provided the assessee established that it was discharged by actual payment before the date applicable in his case for furnishing the return of income under section 139(1) in respect of relevant previous year in which the liability had been incurred. In view of this settled legal position, we hold that the Tribunal was right in holding that since the assessee had paid the amount before the due date, section 43B would not operate against the assessee. The question no. 1 is therefore, answered accordingly in the affirmative in favour of the assessee.

3. The second question relates to the payment of insurance premium by the company for its director for whom personal accident insurance policy was taken out. Both the sides had taken sufficient time to produce a copy of the policy, but they have said that no such policy is traceable. The question whether a premium paid for the policy taken out for the Managing Director would constitute benefit to the director within the meaning of section 40(C) or not would depend upon the nature of the policy, who had taken it out and whose obligation was it to pay the premium. If the intention of the company had by taking out such policy of insuring the director against personal accident, was in fact, to insure itself in respect of the liability that may arise towards the director,as a result of accident, then that situation would be different from a director himself taking out a personal accident insurance under which he would be obliged to pay the premium and not the company. If such premiums are reimbursed to the director which is an obligation of the director himself to pay and not that of the company qua the insurance company, then that would amount to benefit to the director. The Tribunal has applied the decision of the Delhi High Court in CIT vs.Lala Shridhar, reported in 84 ITR, 192 for allowing expenditure of insurance premium on the footing that the facts of the present case as regards the nature of the insurance policy were similar. In Lala Shridhar's case, it was noted that the act of taking out of insurance policy was not a voluntary act of the director and the decision to take the policy was taken by the company. It was the duty of the employer-company in that case to pay the premium in respect of the insurance policy and there was nothing on the record to show that the assessee (in that case, the director) himself wanted to take out an insurance policy. In the present case also, it is not shown that the director himself wanted to take out the insurance or that it was his own obligation to pay the premium and in fact no such contention seems to have been canvassed before the lower authorities. The amount of premium involved was Rs. 913/- only. We do not find any error of law committed by the Tribunal in holding that the personal accident insurance premium was not meant to be a benefit or perquisite in favour of the director. The question no. 2 is therefore, answered in the affirmative in favour of the assessee and against the revenue. The Reference stands disposed of accordingly with no order as to costs.

.....

***darji